

REMARKS/ARGUMENTS

The rejections presented in the Office Action dated July 29, 2008, (hereinafter Office Action) have been considered, and reconsideration of the pending claims and allowance of the application in view of the present response is respectfully requested.

Applicant respectfully traverses the asserted interpretation of the terms “sync server” and “client” set forth at page two of the Office Action. Specifically, the asserted interpretation is contrary to, and appears to ignore, the discussion of paragraph [0010] of the instant Specification. Notably, the claimed invention is applicable to client-server type synchronization protocols other than the SyncML standard, with one example being SyncML device management. The asserted interpretation of these terms fails to give the terms “sync server” and “client” their plain meaning and instead limits the terms to an interpretation under a specific protocol. Such an interpretation fails to comply with the requirements of MPEP § 2111.01 and is contrary to Applicant’s specification. Thus, limiting the interpretation of these terms to the SyncML standard as asserted is improper and should not be maintained.

With respect to the § 101 rejection of Claims 16 and 20, the claims have been amended to characterize that the computer program is encoded on a computer readable medium such that it is structurally and functionally interrelated to the medium. Consistent with MPEP § 2106.01, Applicant submits that Claims 16 and 20 are directed to statutory subject matter and accordingly requests that the rejection be withdrawn.

Applicant respectfully traverses each of the § 103(a) rejections, each of which is based upon at least a combination of the teachings of the SyncML Sync Protocol Specification, version 1.0 (hereinafter “SyncML”) and U.S. Publication No. 2003/0027526 to Hillyard (hereinafter “Hillyard”) because the asserted references alone, or in combination, do not teach or suggest certain of the claimed limitations. SyncML admittedly does not teach or suggest the claimed definition based on a first synchronization session, checking, and use of role information, and it does not appear to suggest a single device being capable of functioning as both a client and a sync server. However, the relied-upon teachings of Hillyard fail to overcome these deficiencies since Hillyard also does not teach

or suggest storage/use of role information on a synchronization device (either sync server or client) that is defined on the basis of a synchronization session or initiating a synchronization session from a synchronization device in accordance with such role information. Rather, the cited features of Hillyard are lower-layer Bluetooth transmission features, and the Hillyard reference fails to include the term “synchronization”. Thus, the role information of Hillyard is not based on a first synchronization session and does not indicate whether a device should serve as a client or a sync server in at least one subsequent synchronization session. As neither of the asserted references teach or suggest at least definition and use of synchronization role information, as claimed, any combination thereof must also fail to teach such limitations. Without correspondence to each of the claimed limitations, the § 103(a) rejections are improper.

In addition, the assertion that a skilled artisan would look to the Bluetooth role information of Hillyard to negotiate database synchronization in SyncML is based upon hindsight reasoning. First, Hillyard makes no mention of, and is unrelated to, synchronization. Second, the Bluetooth RF technology taught by Hillyard is not related to the lower-layer transport technology, such as HTTP, used in SyncML’s synchronization of databases. Thus, the addition of Hillyard’s Bluetooth role information would not yield predictable results for establishing synchronization sessions using SyncML’s synchronization protocol.

A skilled artisan using common sense would not look to use Hillyard’s Bluetooth role information to establish synchronization sessions. “Combining prior art references without evidence of such a suggestion, teaching, or motivation simply takes the inventor’s disclosure as a blueprint for piecing together the prior art to defeat patentability--the essence of hindsight.” *In re Dembiczak*, 175 F.3d 994, 999 (Fed. Cir. 1999). “Not only must the claimed invention as a whole be evaluated, but so also must the references as a whole, so that their teachings are applied in the context of their significance to a technician at the time—a technician without our knowledge of the solution.” *Interconnect Planning Corp. v. Feil*, 774 F.2d 1132, 1143 (Fed. Cir. 1985). Therefore, Applicant respectfully submits that the proffered motivation is a hindsight combination of prior art based on Applicant’s

teachings, and the requisite showing of motivation to combine Hillyard with SyncML has not been met. Applicant accordingly requests that each of the § 103(a) rejections be withdrawn.

With particular respect to the rejection of dependent Claim 6, Applicant traverses the rejection because the assertion of Official Notice that information is not stored when a default value is set fails to show correspondence to each of the claimed limitations. First, the Examiner has not provided any evidence in support of this assertion and instead appears to be impermissibly asserting that Hillyard constitutes facts outside of the record which are capable of instant and unquestionable demonstration as being well known or obvious to one skilled in the art. Applicant notes that allegations concerning specific knowledge of the prior art...should be supported and the applicant should be given the opportunity to challenge the correctness of such assertions and allegations. The facts so noticed serve to “fill the gaps” which might exist in the evidentiary showing and should not comprise the principle evidence upon which a rejection is based. MPEP § 2144.03, citing *In re Ahlert* 424 F.2d 1088, 1091, 165 USPQ 418, 420-421 (CCPA 1970). Although it is asserted that information is not stored when a default value is set, there is no suggestion or evidence that Hillyard would provide a device with a default value of synchronization client. The unsupported assertion of “Official Notice” does not overcome the above-discussed deficiencies of the asserted combination and does not provide any evidence that such asserted facts would be combined with the teachings of SyncML. Thus, the asserted teachings do not, alone or as combined, correspond to the claimed invention, and the rejection should be withdrawn.

Regarding the § 103(a) rejections of various dependent claims, Applicant further traverses because the teachings of U.S. Publication No. 2005/0091413 to Wallbeck; U.S. Patent No. 5,884,323 to Hawkins *et al.*; and U.S. Patent No. 6,272,545 to Flanagan *et al.* do not overcome the above-discussed deficiencies in the combination of SyncML and Hillyard and further do not teach the asserted limitations. For example, contrary to the assertions in the Office Action, Hawkins *et al.* do not teach that role information is application-specific such that separate role information is stored for each application or application profile, as

claimed. Instead, the cited portion of Hawkins merely teaches that applications are synchronized one by one. As none of the asserted references teach at least limitations directed to the definition of role information based upon a synchronization session, as claimed, any combination thereof must also fail to teach such limitations. Without correspondence to each of the claimed limitations, the § 103(a) rejections are improper, and Applicant requests that the rejections be withdrawn.

It should be noted that Applicant does not acquiesce to the Examiner's statements or conclusions concerning what would have been obvious to one of ordinary skill in the art, obvious design choices, common knowledge at the time of Applicant's invention, officially noticed facts, and the like. Applicant reserves the right to address in detail the Examiner's characterizations, conclusions, and rejections in future prosecution.

Also, Claims 1-3, 14, and 23 have been amended to alter the wording of the claims. For example, the preamble of Claim 1 has been shortened, and the word "step" has been removed from Claims 2, 3, and 14. Moreover, Claim 23 was amended to include structural elements where support for such changes may be found in the Specification, for example, at paragraph [0013]. These changes are not made for any reasons related to patentability or to the asserted references and do not introduce new matter. These claims, with or without the changes, are believed to be patentable over the teachings of the asserted references for the reasons set forth above.

Further, new Claim 32 has been added. Support for this claim may be found in the Specification, for example, at paragraphs [0011] and [0014]; therefore, the claim does not introduce new matter. This claim is also believed to be patentable over the asserted references for the reasons set forth above in connection with the independent claims.

Applicant notes that Fig. 5 has also been amended to correct a typographical error. The text of message 506 has been amended to be consistent with the discussion in paragraph [0026] of the Specification. Therefore, this change does not introduce new matter.

Authorization is given to charge Deposit Account No. 50-3581 (KOLS.061PA) any necessary fees for this filing. If the Examiner believes it necessary or helpful, the undersigned attorney of record invites the Examiner to contact the undersigned attorney to discuss any issues related to this case.

Respectfully submitted,

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